IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

CRL.A.No. 214 of 2001()

CRA.133/1995 of ADDL.SESSIONS COURT, KOTTAYAM
C.C.NO.397/93 OF JUDICIAL MAGISTRATE OF THE FIRST CLASS, ERATTUPETTA

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APPELLANT:

K.T.JOSEPH,
KANDATHINKARA VEEDU,
NADACKAL P.O.,
TEEKEY.

BY ADV. SRI.P.VIJAYA BHANU
SMT.P.MAYA

RESPONDENTS:

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1. M.J.JOSEPH,
MUKKALAYIL HOUSE,
MANGALAGIRI BHAGOM,
TEEKEY (KARA) TEEKEY VILLAGE.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.V.G.ARUN
PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl. A.No.214 of 2001-A

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Dated this the 20th day of November, 2007

J U D G M E N T

The appellant is the complainant in C.C.No.397/1993 in the file of the Judicial Magistrate of the First Class, Erattupetta, with respect to the proceedings initiated under Section 138 of the Negotiable Instruments Act, in which the accused stands acquitted as per the order of the lower appellate court.

2. The case of the complainant is that the accused borrowed a sum of Rs.80,000/- and towards discharge of the same issued the impugned cheque which when presented got dishonoured for want of funds in the account of the accused. The lawyer notice sent in the correct address could not be served.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 3 and Exts.P1 to P6. Defence examined DWs.1 and 2.

4. As per the order of this Court the matter was remanded and at the lower appellate court PW.1 and DW.2, i.e., the complainant as well as

the accused were recalled and examined and Exts.D1 to D6 were marked before the lower appellate court.

5. The defence case is that the accused had transaction with one M.J. Sebastian and towards security he had executed an agreement for sale of property and also four signed blank cheques. The above Sebastian had initiated proceedings under Section 138 of the Negotiable Instruments Act and also filed suit for specific performance which was subsequently not pressed. Another proceedings were also initiated under Section 138 of the Negotiable Instruments Act vide C.C.No.396/93 through the son of the complainant herein and Sebastian had initiated proceedings vide C.C.No.372/1993. Both the above cases ended in acquittal. The appellate court found that the contention of the accused appeared probable in view of the several factors that were noticed. It was noted that the complaints of the other complainant Sebastian and the son of the complainant in the present proceedings were filed by the same counsel on the same day and that the cheque numbers are serially numbered and presented on the same day. In the other case, it was noticed that the cheques were issued and Rs.1,60,000/- was borrowed at a time when an agreement for sale was executed by the accused after receiving Rs.1,00,000/-. It was noticed in

such circumstances, the case that further amounts were given at a time when the accused was allegedly heavily indebted cannot be believed. It was also noticed that the lawyer notices were also issued on the same day. It was in the above circumstances that it was held that execution of the impugned cheque stands not established and that the case set up by the accused appeared more probable. In the circumstances and in the light of the evidence adduced in the matter, I find no interference is called for. The criminal appeal is dismissed.

Sd/-
K.R.UDAYABHANU,
Judge

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P.A.to Judge